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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 27th December 2024

S.R.O. No. 3/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th December 2024 passed in the ID Case No. 02 of 2017 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Managements of (1) M/s Rohit Ferrotech Ltd., KNIC, Jajpur, (2) M/s Maa Manasa Enterprises, Umapada, P.O. Jajpur Road, Dist. Jajpur, (3) M/s Tata Steel & Mining Ltd., Dasamania, P.O. Manatira, Via Danagadi, Dist. Jajpur and (1) Shri Manoj Sundaray, At/P.O. Pankapalsasan, Via Danagadi, P.S. Jakhapura, Dist. Jajpur-755021, (2) Shri Rabindra Jena, At/P.O. Manatira, P.S. Jakhapura, Dist. Jajpur-755026, (3) Shri Debendra Ghadei, At/P.O. Manatira, P.S. Jakhapura, Dist. Jajpur-755026 was referred to for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 02 of 2017

Dated the 11th December 2024

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Managements of— . . For the First Party—Managements
(1) M/s Rohit Ferrotech Ltd., KNIC, Jajpur.
(2) M/s Maa Manasa Enterprises, Umapada,
P.O. Jajpur Road, Dist. Jajpur.
(3) M/s Tata Steel & Mining Ltd., Dasamania,
P.O. Manatira, Via Danagadi, Dist. Jajpur.

And

(1) Shri Manoj Sundaray, At/P.O. Pankapalsasan, Via Danagadi, P.S. Jakhapura, Dist. Jajpur-755021, (2) Shri Rabindra Jena, At/P.O. Manatira, P.S. Jakhapura, Dist. Jajpur-755026. (3) Shri Debendra Ghadei, At/P.O. Manatira, P.S. Jakhapura, Dist. Jajpur-755026. .. For the Second Party—Workman

Appearances :

None	..	For the First Party Nos. 1 & 2
Shri Subrat Mishra, Advocate	..	For the First Party No. 3
Shri T. Lenka, Advocate	..	For the Second Parties

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act,1947(for short 'the ID Act') have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. 700—IR(ID)-93/2016-LESI, dated the 28th January 2017 :

SCHEDULE

"Whether the action of the Contractor M/s Maa Manasa Enterprise, KNIC, Duburi, Jajpur in terminating the services of Shri Manoj Sundaray, Rabindra Kumar Jena and Debendra Kumar Ghadei, supply labour by way of refusal of employment w.e.f. the 7th April 2016 is legal and/or justified ? If not, to what relief they are entitled ?"

2. Pursuant to the order of reference, all the members of the second party entered appearance in the dispute. When the disputant Manoj Sundaray filed his claim statement, the other two disputants namely, Rabindra Kumar Jena and Debendra Kumar Ghadei filed a joint claim statement.

Apropos the claim statements filed by the second parties disputant Manoj Sundaray joined to work as a Rigger under M/s Rohit Ferrotech Ltd. (First Party No.1) on 6th January 2011; disputant Rabindra Jena joined to work as a Tapper on 6th October 2008 and disputant Debendra Kumar Ghadei joined to work as a Mano Crain Operator on 10th August 2008, being provided through Contractor M/s Maa Manasa Enterprises (First Party No. 2) and they all continued to work as such till 6th April 2016 and during their continuance though they were covered 'under the ESI and EPF Schemes, yet due to non-deposit of ESI and EPF contributions by the management before the appropriate authorities and for non-providing statutory facilities, they all alongwith others staged a strike, as a result the management being vindictive did not allow them to perform their duties w.e.f. the 7th April 2016 and told that their services have been terminated. It is alleged that such an action was taken against them in gross violation of the provisions of the I.D. Act, inasmuch as, at the time of their termination from service, juniors were retained employment and further new persons were inducted to perform the duties of the second party members. It is further stated in the claim statements that all of them having rendered continuous service for a period of more then 240 days

under the management they were entitled to the protection of Section 25-F of the I.D. Act, but the management violating the said provision and so also without considering the fact that during their continuance no such allegation was made out culminating any enquiry against them, straight away ousted all of them from employment in a most illegal mannr. It is stated that as the second party members are all 'workman' ; the first party is an 'Industry' and their grievance is an 'industrial dispute' within the meaning of the definitions assigned in the ID. Act, they ventilated their grievance before the labour machinary and ultimately the dispute has been referred by the Government to this Tribunal for adjudication.Claiming action of the management to be illegal and unjustified, the second party members have prayed for their reinstatement in service with full back wages and other service benefits, as from the date of their termination they have not been gainfully employed elsewhere.

3. Out of the first parties named in the cause, title, the notices issued to the First Party No.1 and First Party No. 2 returned undelivered with the postal remarks "Refused", and as such they were set *exparte* vide order dated the 29th July 2024. However, the First Partyy No.3 entered its appearance and filed three separate written statements in the case but taking a common stand to the effect that the proceeding is not maintainable as against it on the ground that there being no employer-employee relationship between the second party and the First Party No.3, it is neither a proper nor necessary party to' the dispute and further the second party members being not 'workmen' they do not have any right to raise any dispute against the First Party No.3. It is specifically pleaded in the written statement that the first party No. 3 has taken over the management of First Party No.1 by way of transfer with limited liabilities. Further, it is stated that though the First Party No.1 had preferred a Writ Application bearing No. W.P.(C) 6836 of 2018 before the Hon'ble Court as against the order of reference, but the First Party No. 3 was not chosen to be impleaded as a party in the said Writ Application. It is further stated in the written statement that the First Party No. 3 has taken over the management of First Party No.1 pursuant to the orders dated the 7th April 2022 of the learned National Company Law Tribunal, Kolkata Branch under the provisions of Insolvency and Bankruptcy Code, 2016 with no past liability of First Party No.1 and therefore, the second party members has no authority/right to claim anything against the new management; they being not employees of the concern on the date of acquisition, nor had they laid any claim before the Resolution Profession. It is stated that the First Party No.1 and 2 are the proper parties to the dispute to answer the claim of the second party members and the First Party No. 3 has absolutely got no responsibility with the employment or non-employment of the second party members.

4. Basing on the pleadings of the parties, the following issues have been framed for determination :-

ISSUES

(i) Whether the case is maintainable ?

(ii) Whether there exists any employer-employee relationship between the First Party Management No. 3 and the second parties ?

(iii) Whether the action of the Contractor M/s Maa Manasa Enterprise, KNIC, Duburi, Jajpur in terminating the services of Shri Manoj Sundaray, Rabindra Kumar Jena and Debendra Kumar Ghadei, supply labour by way of refusal of employment w.e.f. the 7th April 2016 is legal and/or justified ?

(iv) If not, to what relief the workmen are entitled ?

5. To substantiate their stand, while the disputant Manoj Sundaray examined himself and deposed on his behalf, the disputant Rabindra Jena deposed for himself as well as for the disputant Debendra Kumar Ghadei. They also relied upon documents marked Ext. 1 to Ext. 8. The First Party No. 3 examined one witness on its behalf who is the Head (HRBP) FAMD, M/s Tata Steel Ltd. and relied on documents marked Ext. A and Ext. B, which are Xerox copy of order dated the 8th August 2023 of Hon'ble NCLT, Cuttack Bench and order dated the 7th April 2022 of Hon'ble NCLT, Kolkata Bench.

FINDINGS

6. *Issue No. (i)*—There being no challenge to the averment of the second parties that the first party is an 'industry' and their termination to be 'industrial dispute', findings on those points seem to be redundant. Further, there having no dispute over the fact that the second parties were contract labourers and were provided by the First Party No. 2 to work under First Party No.1 as Rigger, Tapper and Crain Operator involving manual/technical nature of duties, they can in no way be held to be not covered under the defmition of 'workmen' as pointed out by the First Party No. 3. That apart, this being a reference under Section 10 and 12 of the I.D. Act, the Tribunal, which is a creature of the Statute lacks competency over the reference made by the Government. Hence maintainability of the reference challenged on these scores is not tenable.

7. *Issue No. (iii)*—The legality and justifiability of the action of the, First Party No. 2 in terminating the employment of the second parties by way of refusal of employment w.e.f. 7th April 2016 need to be determined under the present issue.

In the context, it is contended by the learned Counsel representing the second party that all the disputants involved herein have worked continuously for a period of more than 240 days preceding the date of their termination from service under First Party No. 1 being engaged through First Party No. 2, the contractor and 'as such they were all entitled to the protection of Section 25-F of the ID Act, but due to non-adherence of the said provision as well as the provisions of Section 25-G and 25-H of the ID Act by the management, they are all entitled to be reinstated in job with full back wages and be extended with all other consequential service benefits.

Keeping in view the submission laid on this score, first it is to be determined as to how far the second party members are able to establish that they have been terminated from service by way of refusal of employment in gross violation of the provisions of the ID Act. It is pertinent to note that in order to claim protection of the provisions of Section 25-F of the ID Act, the burden is on the disputants-workmen to establish that all of them had rendered continuous service for more than 240 days preceding the date of their termination to get the relief(s). Though Section 25-F of the ID Act is plainly intended to give relief to retrenched workmen, yet the qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the ID Act. In the present case, the provision which is of relevance is Section 25-B(2)(a)(ii) which provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. In this connection, a reference may be made to the Case of R. M. Yellatti *v* The Asst. Executive Engineer (JT 2005 (9) SC 340), wherein their Lordships of the Hon'ble Apex Court have held as follows :

> "Analyzing the, above decisions of this Court, it is clear that the provisions of the evidence Act in terms do not apply to the proceedings under Section 10 of the

> industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. xx xxxx."

8. In the case in hand, though it is the consistent stand of the disputants that they have all rendered continuous service for a substantial period, yet they are required to establish the fact of their continuous employment under their employer at least for a period of more than 240 days preceding the date of their alleged refusal of employment so as to construe the same as termination of their service and to examine the compliance part of the provisions of Section 25- F of the ID Act. "Continuous Service'' being a condition precedent to set into motion the provisions of Section 25-F of the ID. Act, unless the same is proved, the termination in question cannot be looked into.

To substantiate their case, the second party have examined two witnesses on their behalf, who are none else than two concerned disputants involved in the present litigation. Both of them have stated that all of them have worked continuously under the management from the date of their respective joining till termination, but they have been thrown out of employment w.e.f 7th April 2016 in gross violation of the provisions of the I.D.Act and without assigning any reason, whatsoever. However, to substantiate their continuous employment under the employer, not a single document is available on record basing on which a finding can be arrived at that all of them have rendered continuous service at least for a period of 240 days preceding the date of the alleged termination of employment so as to claim the benefit of Section 25-F of the ID. Act. Similarly, except a bald statement that at the time of their termination juniors to them were retained in employment and new persons were engaged in their place, no documentary evidence substantiating such stand is placed for perusal by the Tribunal. Neither document showing the name of the juniors who were retained in employment nor document reflecting names of the new persons who were engaged in place of the disputants are furnished to examine the contravention of the provisions of the ID. Act, as alleged. Although photocopy of an experience certificate issued in favour of one of the disputants, namely Manoj Sundaray is filed and proved as Ext. 7, yet no reliance can be placed on the said document owing to the fact that neither it bears any official letter number nor date. Even Ext. 7 does not bear the official seal of the First Party No. 2. Besides the documentary evidence, as discussed above, some more documents have been relied upon by the second party such as photocopy of an Advocate's notice dated the 18th April 2016 addressed to first party No. 1(Ext. 1); photocopy of letter dated the 9th December 2016 of PIO-*cum*-IIC, Jakhapura Police Station addressed to Manoj Sundaray (Ext. 3); photocopy of complaint dated the 29th April 2016 addressed to the ALC, Jajpur (Ext. 4); photocopy of letter dated the 16th April 2016 addressed to the Collector, Jajpur (Ext. 5); photocopy of letter dated the 11th May 2016 addressed to DLO, Jajpur(Ext. 6) and photocopy of letter dated the 9th November 2016 addressed to the Collector, Jajpur, but it is difficult to infer therefrom the continuous engagement of the disputants so as to put a liability on the management for its in action to comply with the provisions of Section 25-F of the ID.Act while effecting termination of service of the disputants. Except the oral evidence, no material/document is available on record to substantiate the stand of the disputants that they had all rendered continuous employment under the first party for a period of more than 240 days, preceding the date of their refusal of employment and in absence of such evidence, it is difficult on the part of this Tribunal to construe the action of M/s Maa Manasa Enterprises (First Party No. 2) as termination of service of the disputants and to hold its action to be either illegal or unjustified.

The issue is answered accordingly in the negative as against the second party.

9. *Issue No. (ii)*—In view of the discussions held in the preceding paragraphs, findings on this issue becomes academic. However, there being evidence on record on this issue, the Tribunal thinks it appropriate to give a little reference thereof. There is ample evidence on record that the disputants were engaged by M/s Maa Manasa Enterprises (First Party No. 2) to work under M/s Rohit Ferrotech Ltd. (First Party No.1) and not only they were paid wages by first party No. 2, but also they were refused employment by the First Party No. 2. A reference in this context be made to Para. 15 of the cross-examination of WW 1 and WW 2 wherein both of them have admitted that they were employed for wages by M/s Maa Manasa Enterprises, KNIC, a contractor establishment (First Party No. 2) to work under the establishment of M/s Rohit Ferrotech (First Party No.1) and that they were terminated by M/s Maa Manasa Enterprise, KNIC (First Party No. 2). It also transpires from Ext. 2, a letter addressed to one of the disputants, namely Shri Manoj Sundaray that his entry to the Plant premises was restricted by First Party No. 2. In view of the above, there is no doubt over the fact that all the disputants were engaged by First Party No. 2; they were being paid their wages by First Party No. 2 and ultimately they suffered termination of their service by First Party No. 2. In view of the above, it is held that there existed absolutely no employer-employee relationship between the First Party No. 3 (which has taken over the management of First Party No.1 by way of transfer through an insolvency resolution process) and the members of the second party. Accordingly, this Tribunal is of view that the evidence adduced on this score by the First Party No. 3 needs no further discussion.

10. *Issue No.(iv)*—In view of the specific finding arrived at on Issue No. (iii) the reference is answered in the following manner :

"The second party members having failed to establish that they had rendered continuous service for more than 240 days under the Contractor M/s Maa Manasa Enterprise, KNIC, Duburi, Jajpur, the impugned action can never be said to be either illegal or unjustified, accordingly the second party are held entitled to no relief in the present proceeding."

Dictated and corrected by me.

BENUDHAR PATRA
11-12-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
11-12-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 11139—LESI-IR-ID-0057/2016-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government

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